

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-643

CLAUDIA MENDOZA

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEES

Opinion Delivered November 19, 2008

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. J2006-1073-D/N]

HONORABLE JAY T. FINCH, JUDGE

AFFIRMED; MOTION GRANTED

KAREN R. BAKER, Judge

On March 11, 2008, the Benton County Circuit Court entered an order terminating Claudia Mendoza's parental rights to her two children: J.V.M., born November 8, 2003, and J.M.M., born January 23, 2006. Her attorney has filed a motion to withdraw and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Ark. Sup. Ct. R. 4-3(j)(1). Counsel's brief discussed the sufficiency of the evidence to support the termination order and asserted that there were no adverse rulings made at trial.

Mendoza filed a pro se response to counsel's brief, questioning whether the circuit court could terminate her parental rights because she is a citizen of Mexico. She also questions whether the termination was in her children's best interests. Neither point has merit. In *Johnson v. Eisentrager*, 339 U.S. 763 (1950), the Court stated that it was the alien's presence within a state's territorial jurisdiction that gave the state court the power to act over the alien. Here, Mendoza was unquestionably within the territorial confines of Benton County and subject to the jurisdiction of the

Benton County Circuit Court.

Mendoza next argues that the termination is not in the children's best interests. Here, there was undisputed testimony that the children were adoptable. This indicated that DHS had a proper placement plan for the children. *See M.T. v. Arkansas Dep't of Human Servs.*, 58 Ark. App. 302, 952 S.W.2d 177 (1997). The next factor to consider is whether there was proof that the children would face potential harm if they were returned to their parents' custody. Our supreme court has directed that the harm analysis be conducted in broad terms, including the harm the child suffers from the lack of stability in a permanent home. *See Bearden v. Arkansas Dep't of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). By being incarcerated, Mendoza cannot provide her sons with a proper home. She admits that she is under a ten-year sentence but asserts that she will be released in November 2009. However, even accepting Mendoza's calculation as to her release, she would not immediately be reunited with her children. That would take additional time, possible in excess of one year, before the children are able to achieve a stable home. That cannot be said to be a reasonable time when viewed from the perspective of a two-year-old and a four-year-old.

After carefully examining the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit termination cases, and we hold that the appeal is wholly without merit. We hold that the circuit court's decision to terminate Mendoza's parental rights was not clearly erroneous. Accordingly, we grant counsel's motion to withdraw and affirm the order terminating Mendoza's parental rights.

Affirmed.

BIRD and MARSHALL, JJ., agree.